IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 31154 of 2005(H)

OS.33/2005 of MUNI-MAGI.COURT,PATTAMBI
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PETITIONERS:
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1. ABDULLA HAJI, AGED 50 YEARS,
S/O. KUNHAPPU HAJI, MUNDAROTT HOUSE, KAPPUR AMSOM DESOM, OTTAPPALAM TALUK, PALAKKAD DISTRICT.

2. HASSAN, AGED 55 YEARS,
S/O. HYDRU HAJI, KOONAMPARAMBIL HOUSE, KAPPUR AMSOM DESOM, OTTAPPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENT:

MUHAMMED @ KUTTIPPA, AGED 65,
S/O. LATE MOIDUNNI, KOONAMPARAMBIL HOUSEE, KAPPUR AMSOM DESOM, OTTAPPALAM TALUK, KAPPUR P.O., PALAKKAD DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH
SMT.MEENA.A.
SMT.M.R.MINI
SMT.SANJANA R.NAIR
SRI.V.S.ROBIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 31154 OF 2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF PLAINT IN OS 33/2005 ON THE FILE OF MUNSIFF MAGISTRATE COURT, PATTAMBI.

EXT.P2 : TRUE COPY OF IA NO.179/2005 WITH AFFIDAVIT IN IA NO.179/2005 IN OS 33/2005 BEFORE THE MUNSIFF MAGISTRATE COURT, PATTAMBI.

EXT.P3 : TRUE COPY OF THE ORDER IN IA NO.179/2005 IN OS 33/2005 OF THE MUNSIFF MAGISTRATE COURT, PATTAMBI. DATED 02.03.05.

EXT.P4 : TRUE OCPY OF AFFIDAVIT AND PETITION IN IA NO.55/2005 IN OS 33/2005 BEFORE THE MUNSIFF MAGISTRATE COURT, PATTAMBI.

EXT.P5 : TRUE COPY OF OBJECTION IN IA NO.179/2005 IN OS 33/2005 OF THE MUNSIFF MAGISTRATE COURT, PATTAMBI.

EXT.P6 : TRUE COPY OF THE OBJECTION FILED IN IA NO.878/2005 IN OS NO.33/2005 BEFORE THE MUNSIFF MAGISTRATE COURT, PATTAMBI.

EXT.P7 : TRUE COPY OF THE ORDER IN IA NO.878/2005 IN OS NO.33/2005 DATED 05.10.05 BEFORE THE MUNSIFF MAGISTRATE COURT, PATTAMBI.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31154 OF 2005

Dated this the 6th day of August, 2007

JUDGMENT

Ext.P7 order passed by the learned Munsiff on an application under Order XXXIX Rule 7 for preservation of the suit property by directing the petitioner to remove the laterite stones collected by the petitioner on the respondent's property is under challenge.

2. Heard Sri.P.Chandrasekhar, learned counsel for the petitioners and Smt.A.Meena, learned counsel for the respondent. My attention was drawn by Mr.Chandrasekhar to Ext.P4 application submitted by the petitioner seeking appointment of an advocate commissioner for overseeing the construction of retaining walls by the sides of the disputed way utilisting the stones presently collected. According to Mr.Chandrasekhar, the court below was not justified in passing the impugned order even as Ext.P4 was pending. The learned counsel for the respondent would submit that though it is true that the respondent granted an initial permission to the petitioner for collecting the stones on the respondent's property, the understanding was that before the agricultural season comes, the stones will be removed. It is only when the petitioner was not prepared to remove the stones that the respondent became obliged to file the application resulting in Ext.P7

order since without Ext.P7 it will not be possible for the respondent to conduct agricultural operations in the property.

I find that while admitting this Writ Petition, this Court ordered stay for one month which is being continued even now. Having regard to the rival submissions, I feel that if it is ensured that the petitioner constructed retaining walls by the sides of the pathway within a time frame, in such a way as not to widen the pathway, the entire controversy involved in the suit will be resolved once and for all. Under these circumstances, I dispose of the Writ Petition itself issuing following directions:

The order of stay presently passed will continue for another four months from today. The learned Munsiff will take up Ext.P4 application immediately, hear both sides and pass appropriate orders appointing an advocate commissioner for over seeing the construction of the retaining walls by the sides of the disputed pathway by the petitioner in such a manner as not to widen the pathway. The learned Munsiff will pass appropriate orders on Ext.P4, so that the laterite stones presently collected will be removed by the petitioner and retaining walls constructed as stated in Ext.P4 at the earliest and at any rate within three months of receiving copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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